

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

A & J PRODUCE CORP., MENDEZ
INTERNATIONAL TROPICAL FOODS INC.,
and TOP BANANA LLC,

Case No. 21-cv-6066 (PAC)

Plaintiffs,

- against -

DR PRODUCE, LLC d/b/a SYCAMORE FOODS NJ,
DR. PRODUCE REALTY LLC, LOVELY FARMS
OPCO LLC, OLIX OIL (USA) LLC, PAVLOS
VARDINOYANNIS, DARIO FORTUNA
and NICHOLAS P. VARDINOYANNIS,

Defendants.

[PROPOSED] ORDER GRANTING PLAINTIFFS' COUNSEL'S *MOTION* FOR INTERIM DISTRIBUTION OF AVAILABLE FUNDS

Plaintiffs' Counsel¹ seeks entry of an order: (1) pursuant to paragraph 42 of the Consent Injunction, directing the immediate distribution of Available Funds in accordance with the Distribution Amounts set forth in the PACA Trust Chart; (2) pursuant to paragraph 39 of the Consent Injunction, confirming the disallowance of the PACA Proofs of Claims filed by L&T Food Distributor Inc. t/a My Vo Produce and defendants Dr. Produce Realty LLC and Dario Fortuna in their entirety; and (3) awarding PACA Trust Beneficiaries such other and further relief as the Court deems just and proper.

Upon consideration of Plaintiffs' Counsel's Motion for Interim Distribution of Available Funds and Notice of Filing PACA Trust Chart (Docket No. 106) (the "Motion"), the Declaration of Gregory Brown in Support of Plaintiff's Counsel's Motion for Interim Distribution of

¹ Unless otherwise defined herein, capitalized terms in this Order shall have the meanings ascribed in the Consent Injunction Order and Order Establishing PACA Trust Claims Procedure and Granting Related Relief (Docket No. 46) (the "Consent Injunction").

Available Funds (Docket No. 107), and the exhibit annexed thereto, and the Certificate of No Objection to the Motion (Docket No. 109) (the “Certificate of No Objection”), the Court makes the following findings of fact and conclusions of law:

1. On August 16, 2021, this Court entered the Consent Injunction which, *inter alia*, provided for the creation of the PACA Trust Account (Consent Injunction at ¶¶ 5-12), authorized and directed the collection of Receivables (*id.* at ¶¶ 15-23), liquidation of FF&E and any other PACA Trust Assets (*id.*) and required the proceeds from such efforts to be deposited into the PACA Trust Account (*id.*).
2. The Consent Injunction also established the PACA Claims Procedure (Consent Injunction at ¶¶ 29-46) whereby creditors of defendant Dr Produce, LLC d/b/a Sycamore Foods NJ (“Dr. Produce”) could assert an interest in the PACA Trust Account, file claims with the Court, and have those claims vetted by Dr. Produce, its creditors and, if necessary, the Court. Plaintiffs’ Counsel served the Notice on Dr. Produce’s Payables and other parties in interest on August 18, 2021 (Docket No. 47).
3. Following service of the Notice, sixteen alleged PACA Claimants filed PACA Proofs of Claim, one alleged secured creditor filed a Complaint in Intervention (Docket No. 98), and defendants Dr. Produce Realty LLC (“DPR”) and Dario Fortuna (“Fortuna”) (DPR and Fortuna collectively, the “DPR Defendants”) filed a Proof of Claim (Docket No. 70).
4. The PACA Proofs of Claim and proposed distributions in accordance with the Consent Injunction are set forth in the PACA Trust Chart annexed to the Motion.
5. Although L&T Food Distributor Inc. t/a My Vo Produce (“My Vo”) served a PACA Proof of Claim on October 1, 2021 (Docket Nos. 85, 90 and 97), the

claim failed to comply with the requirements of the Consent Injunction and My Vo did not respond to the two Timely Objections to its claim by the Deadline to File Responses to Claims Objections or within the additional time permitted by the Court.

6. Although the DPR Defendants filed a Proof of Claim (Docket No. 70), the claim did not reflect the sale of produce to Dr. Produce by the DPR Defendants and the DPR Defendants did not respond to the objection by the Deadline to File Responses to Claims Objections or within the additional time permitted by the Court.

7. Although Dilip Patel (“Patel”) filed a Complaint in Intervention on October 5, 2021 (Docket No. 98) (the “Intervenor Complaint”) pursuant to the Consent Injunction, the Intervenor Complaint does not seek to recover a sum certain, nor does it assert any interest in the PACA Trust Account. In addition, by so-ordered stipulation dated October 15, 2021 (Docket No. 100) (the “Patel Stipulation”), Patel acknowledges that “any claim or interest he may hold against Dr. Produce, or in assets in the possession of Dr. Produce, are subordinate to the claims and interests of” the PACA Trust Beneficiaries, “including but not limited to the funds in” the PACA Trust Account, and “Patel expressly hereby waives the right to assert any claim or interest contrary to the foregoing.” (Patel Stipulation at ¶ 1.) As a result of the applicable provisions in the Consent Injunction and the Patel Stipulation, Patel has no interest in the PACA Trust Account and will not be prejudiced by a distribution of the Available Funds even though his Intervenor Complaint technically remains unresolved.

8. No objections or responses have been filed to the Motion or PACA Trust Chart, as certified in the Certificate of No Objection.

9. On October 27, 2021, Dr. Produce, through counsel, filed a PACA Trust

Account Status Report (Docket No. 105) (the “Status Report”). The Status Report reflects that, as of the time of filing, there was \$507,328.13 in the PACA Trust Account.

10. The Consent Injunction requires that, in the event there are no objections to the Motion or the PACA Trust Chart, “Dr. Produce, by Jonathan Bodner, shall, and is hereby authorized to, make an interim distribution of Available Funds in accordance with the PACA Trust Chart.” (Consent Injunction at ¶ 43.) The Consent Injunction defines Available Funds as “75% of the funds on deposit in the PACA Trust Account as reflected in Dr. Produce’s most recently filed report.” (Consent Injunction at ¶ 42.)

Accordingly, this ____ day of November, 2021, it is hereby
ORDERED, that the Motion is granted in its entirety; and it is further
ORDERED, that the following PACA Claimants have valid PACA Trust Claims as

follows:

PACA Claimant	Claim Amount	Allowed Amount
Minkus Family Farms, Inc.	\$15,810.00	\$15,810.00
Del Monte Fresh Produce N.A., Inc.	\$76,255.37	\$75,165.48
John B. Ordille, Inc.	\$23,654.00	\$22,790.73
USA Tropicals Inc.	\$81,922.00	\$46,922.00
Coosemans New York Inc.	\$11,917.64	\$11,917.64
A & J Produce Corp.	\$286,038.02	\$281,588.85
Mendez International Tropical Foods Inc.	\$85,517.44	\$84,076.07
Top Banana LLC	\$95,561.47	\$94,084.48
Rubin Bros. Produce Corp.	\$32,530.24	\$32,024.22
E. Armata, Inc.	\$37,547.45	\$36,968.26
Fierman Produce Exchange Inc.	\$5,775.32	\$5,727.98
New Asian Tropical Produce LLC	\$81,191.64	\$81,147.00
Nathel & Nathel, Inc.	\$22,608.00	\$22,608.00
Tom Lange Company, Inc.	\$6,489.50	\$6,489.50
Elite Farms Inc.	\$20,792.00	\$20,792.00
	\$883,610.09	\$838,112.21

and it is further

ORDERED, that in accordance with the Consent Injunction and this Order, Dr. Produce,

by Jonathan Bodner, shall, and is hereby authorized to, make an interim distribution of Available Funds in accordance with the PACA Trust Chart to the PACA Trust Beneficiaries in the sum of \$380,496.10 as follows:

PACA Claimant	Distribution Amount
Minkus Family Farms, Inc.	\$7,177.61
Del Monte Fresh Produce N.A., Inc.	\$34,124.51
John B. Ordille, Inc.	\$10,346.81
USA Tropicals Inc.	\$21,302.20
Coosemans New York Inc.	\$5,410.51
A & J Produce Corp.	\$127,839.04
Mendez International Tropical Foods Inc.	\$38,169.85
Top Banana LLC	\$42,713.59
Rubin Bros. Produce Corp.	\$14,538.73
E. Armata, Inc.	\$16,783.29
Fierman Produce Exchange Inc.	\$2,600.46
New Asian Tropical Produce LLC	\$36,840.08
Nathel & Nathel, Inc.	\$10,263.85
Dr. Produce Realty LLC, Dario Fortuna	\$0.00
Tom Lange Company, Inc.	\$2,946.18
Elite Farms Inc.	\$9,439.40
L&T Food Distributor Inc.	\$0.00
	<u>\$380,496.10</u>

and it is further

ORDERED, that the PACA Proofs of Claim filed by My Vo and the DPR Defendants are disallowed in their entirety, My Vo and the DPR Defendants are not PACA Trust Beneficiaries, and My Vo and the DPR Defendants shall not share any distribution from the PACA Trust Assets; and it is further

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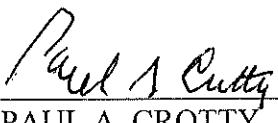
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ORDERED, that Patel's Intervenor Complaint does not serve to prevent the distribution of Available Funds as set forth herein.

Dated: New York, New York
November 22, 2021

SO ORDERED


Paul A. Crotty
PAUL A. CROTTY
United States District Judge